

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAWRENCE FLUELLEN,

Plaintiff,

Case No. 23-cv-554-pp

v.

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE (DKT. NO. 2) AND ORDERING
PLAINTIFF TO FILE AMENDED COMPLAINT**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed an application for leave to proceed without prepaying the filing fee. Dkt. No. 2.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Although the plaintiff did not file his request to proceed without prepaying the filing fee on this court's standard form, based on the facts in the application the plaintiff did file, the court concludes that he does not have the ability to pay the filing fee. In his application, the plaintiff lists no wages or salary; his only source of income is \$281 per month in food stamps. Dkt. No. 2 at 1-2. The plaintiff has \$15 in a checking account and he owns a 2013 Ford

Escape worth approximately \$4,000. Id. at 3-4. The plaintiff has a 16-year-old son he is responsible for supporting, but there is no amount of support listed. Id. at 4. The only expense listed by the plaintiff is \$281 monthly for food. Id. at 5. The plaintiff says, “I am disabled and unable to work, I stay with my girlfriend who helps me as best as she can. I receive food stamps. My girlfriend has me on her phone plan.” Id. at 6. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The complaint does not provide sufficient information for the court to make a determination as to whether the case is frivolous. The complaint does not state a claim at all—it merely indicates that the plaintiff “presented evidence at the level of the Administrative Law Judge and at the level of the Appeals Council demonstrating that he suffers asthma, diabetes, mellitus, lumbar degenerative disc disease and other medical impairments, which limits his ability to perform any work.” Dkt. No. 1 at 2. The complaint states that this

court has jurisdiction and that the plaintiff has exhausted all administrative remedies. Id. at 1-2. The plaintiff asks that the court “[r]eview the denial of the Defendant and reverse or remand case for further proceedings” and “[a]ward Plaintiff attorney’s fees plus costs” under the Equal Access to Justice Act. Id. at 2.

The complaint does not inform the court of the reason or reasons the plaintiff believes the Commissioner’s adverse decision was wrong and on what basis he is appealing the Commissioner’s decision. Lacking this information, the court cannot conclude whether there may be a basis in law or in fact for the plaintiff’s appeal of the Commissioner’s decision, and that appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i). The court will allow the plaintiff to file an amended complaint correcting the issues addressed in this order. The plaintiff may want to look for guidance to this district’s Complaint for Review of a Final Decision by the Commissioner of the Social Security Administration. Both that form and the court’s standard request to proceed without prepaying the filing fee (which the court urges plaintiff’s counsel to use for future filings) are available on the court’s website, www.wied.uscourts.gov under Forms, Social Security.

The court **GRANTS** the plaintiff’s motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

The court **ORDERS** that by the end of the day on May 19, 2023, the plaintiff must file an amended complaint that informs the court of the basis upon which he is appealing the Commissioner’s denial of benefits. If the

plaintiff does not file an amended complaint by the end of the day on May 19, 2023, the court may dismiss this case.

Dated in Milwaukee, Wisconsin this 4th day of May, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge